JA

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,339	09/15/2003	Claudine Iannucci		8040

7590 04/04/2005

Claudine Iannucci
23730 Glenbrook
Saint Clair Shores, MI 48082

EXAMINER	
PELHAM, JOSEPH MOORE	
ART UNIT	**PAPER NUMBER**
3742	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

Office Action Summary	Application No.	Applicant(s)	
	10/661,339	IANNUCCI, CLAUDINE	
	Examiner	Art Unit	
	Joseph M Pelham	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4 and 6* is/are rejected.

7)☒ Claim(s) *5* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The Examiner acknowledges Applicant's submission of the response filed 9/8/04. Claims 1-6 remain pending.

Claim Rejections - 35 USC § 103

Claims 1-3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 2546983 in view of US Pat. 3549861 and US Pat. 3931494.

US'983 discloses inner and outer receptacles as claimed, including heating coils 20 "wound and affixed to the inner" receptacle 10, which receive electrical power from main power cords 254, 26, inner cap 36, and threaded outer cap 33.

US'983 does not explicitly disclose a threaded inner cap, a metal inner receptacle, and battery power with a battery adapter to connect a battery.

Referring to Fig. 1, US'861 discloses a threaded inner cap 80, a metal inner receptacle 56, and a power cord 39. Referring to Figs. 3 and 4, US'494 discloses a "battery" 19, as claimed, in a base compartment of a portable, heated beverage container. It would have been obvious to adapt the threaded inner cap, a metal inner receptacle of US'861 to the container of US'983 to provide a more secure inner closure, and to avoid a breakable inner receptacle. It would have been obvious to adapt the battery of US'494 to the container of US'983 to provide power where other supply means are not available.

While US'494 does not explicitly disclose a battery adapter to connect a battery, as recited in claim 5, or plastic construction of the outer receptacle and caps, this does not patentably distinguish the claimed invention from the prior art. It would have been obvious to so modify the battery arrangement of US'494 to allow either the use of disposable batteries, and thereby avoid recharging, or the use of removable batteries that can be recharged, and thereby avoid removing the device from service while recharging, both of which have long been conventional alternatives in battery powered devices; plastic construction of housing and lids would have been obvious by reason of their weight and economy, which have long commended their use in diverse electric household appliances.

Allowable Subject Matter

Claim 4 would objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/8/04, with respect to claims 1-3, 5, and 6, have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

At the first full paragraph of page 2 of the Response, Applicant states that her invention is "for use with battery power only." The claims, however, recite just that the device is "battery operated" with a "battery compartment" (claim 1), and a "battery adapter to connect a battery" (claim 5). US'494 does in fact disclose the claimed "battery operation" and a "battery compartment:" a rechargeable battery is nonetheless a battery. The "battery adapter to connect a battery" would have been a minor and obvious modification as discussed above.

Applicant states further that instant claim 3 recites heating coil materials not disclosed in the prior art; however, referring to Fig. 1 and col. 3, line 53, US'983 discloses heating coils 20 of "metallic" material. Copper alloy construction is a notoriously old and well known heater coil material, and is therefore either inherent in the US'983 patent or immediately obvious to the artisan.

Applicant states that the "silver coating" of the inner compartment of US'983 would have to be changed to accommodate the battery of US'494. The Examiner respectfully urges that he has not proposed the whole bodily incorporation of the US'494 and US'983 structures, but merely the combination that would have been considered by one of ordinary skill in the art. In this case, adapting the battery of US'494 to the US'983 compartment would certainly require that the configuration of the inner and outer compartments be modified, but this would merely entail a space to accommodate the battery, a modification safely within the competency of the artisan.

With respect to Applicants statement that her invention is intended to be used with liquids or solids, the container disclosed by the prior art appears fully capable of the same, and the claims do not, moreover, distinguish Applicant's invention from the prior art devices. The Examiner emphasizes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant states, at paragraph 2 (2nd full paragraph), also page 2, that the combination poses "safety issues." One must assume that the artisan considering this combination would conform to safety codes, and there is no reason to assume that this is prohibitively complicated. Moreover, the cap 80 of US'861 is clearly depicted in Fig. 1, and the Examiner does not understand Applicant's comment that utilizing such a cap would "conflict with ample storage of the contents" (last paragraph).

Applicant states, also at paragraph 2, that the three cited patents "do not have the same inner compartment application" as hers. Note, however, that US'983 discloses heating coils 20 "wound and affixed to the inner" receptacle 10, exactly as recited by Applicant, and when the more durable metal inner receptacle of US'861 is substituted for the fragile glass receptacle of US'983, the combination meets the claim limitations.

Regarding Applicant's argument that her recited battery power source is distinct from that of US'494, and the use of "heat safe plastics," as recited in claim 6, as discussed above in the rejection, the claims do not make the distinction of battery type,

and plastics have been conventional in such applications since well before the time of Applicant's invention.

Applicant is urged to review the prior art cited but not applied in the rejection, particularly the structure of the container disclosed in U.S. Pat. 3423571, the heated metal container disclosed by U.S. Pat. 5946936, and the balance of newly cited patents.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

7/26/04

JOSEPH PELHAM
PRIMARY EXAMINER